

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96606; File No. SR-IEX-2022-14)

January 6, 2023

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Supplementary Material .15 of IEX Rule 5.110 (Supervision).

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 23, 2022, the Investors Exchange LLC (“IEX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by IEX. IEX has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A)⁴ of the Act and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposed rule change effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁶ and Rule 19b-4

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ 15 U.S.C. 78s(b)(1).

thereunder,⁷ IEX is filing with the Commission a proposed rule change to amend Supplementary Material .15 of IEX Rule 5.110 (Supervision) to extend the temporary remote inspection relief to IEX Members through the earlier of the effective date of the FINRA pilot program on remote inspections (the “FINRA Pilot Program”)⁸, if approved, or December 31, 2023. The proposed extension would alleviate the ongoing operational challenges resulting from the COVID-19 pandemic that many member firms may continue to face in planning for and timely conducting required on-site inspections at locations requiring inspection in calendar year 2023.

The text of the proposed rule change is available at the Exchange’s website at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The COVID-19 pandemic has caused a host of operational disruptions to the securities

⁷ 17 CFR 240.19b-4.

⁸ See Securities Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (File No. SR-FINRA-2022-21).

industry and impacted IEX Members⁹, regulators, investors, and other stakeholders. In response to the pandemic, IEX adopted Supplementary Material .15 of IEX Rule 5.110 to provide Members the temporary option of satisfying their inspection obligations for offices of supervisory jurisdiction, branch offices, or non-branch locations under IEX Rule 5.110 (Supervision) remotely for calendar years 2021 and 2022, subject to specified conditions,¹⁰ due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. While there are several signs that the pandemic has receded, much uncertainty still remains. The emergence of new variants, dissimilar vaccination rates throughout the U.S., and varying levels of transmissions of the virus all indicate that COVID-19 remains an active and real public health concern. Against this setting, IEX understands the complexity Members face in assessing when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (e.g., a personal residence).¹¹ Accordingly, due to the continued logistical challenges of going on-site to branch offices or locations while these public health and safety concerns related to COVID-19 persist coupled with several Members delaying their return-to-office plans, IEX believes that extending the

⁹ See IEX Rule 1.160(s).

¹⁰ See Securities Exchange Act Release No. 92222 (June 22, 2021), 86 FR 34069 (June 28, 2021) (SR-IEX-2021-09) (providing remote inspection relief to Members for calendar year 2021), and Securities Exchange Act Release No. 96460 (December 7, 2022), 87 FR 76222 (December 13, 2022) (SR-IEX-2022-12) (providing remote inspection relief to Members for calendar year 2022).

¹¹ For example, IEX understands that both the Commission and FINRA do not currently require employees to return to the office. See SEC Fiscal Year 2022 Agency Financial Report, available at <https://www.sec.gov/files/sec-2022-agency-financial-report.pdf> and <https://www.finra.org/rules-guidance/key-topics/covid-19>.

temporary remote inspection relief to Members is warranted.

FINRA has filed with the Commission File No. SR-FINRA-2022-021, a proposed rule change to adopt a voluntary, remote inspections pilot program that is currently pending Commission review. The FINRA Pilot Program would provide for a voluntary, three-year remote inspection pilot program to allow broker-dealers to elect to fulfill their obligation under FINRA Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms. FINRA has stated that the review period for its rule filing may extend well into 2023. Given the potential length of that review period, and the pilot program's significant planning requirements and varying limitations applicable to specific firms and office locations, FINRA believes that firms that intend to participate in the pilot program, if approved, would need a significant number of months to prepare appropriately for the pilot program. Moreover, further FINRA guidance might be needed to guide implementation in various circumstances.

To provide regulatory certainty while the pilot program filing is pending, and to avoid overlapping provisions if it is approved, IEX is proposing to amend Supplementary Material .15 of Rule 5.110 so that the temporary relief would expire on the earlier of the effective date of the FINRA Pilot Program or December 31, 2023. In the event the FINRA Pilot Program is not approved by December 31, 2023, the proposed rule change will automatically sunset on December 31, 2023. IEX will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond December 31, 2023. In the event the FINRA Pilot Program is approved prior to December 31, 2023, IEX will file a conforming rule change with the Commission.

The proposed rule change will conform IEX's rules with those of FINRA, which has

extended the same temporary remote inspection relief to all FINRA member firms.¹² This proposed extension would provide further clarity to Members on regulatory requirements and account for time needed for many Members to carefully assess when and how to have their employees safely return to their offices considering vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

The proposed amendment would provide that Members have the option to conduct remotely those inspections described in Supplementary Material .15 to IEX Rule 5.110 through the earlier of the effective date of the FINRA Pilot program, if approved, or December 31, 2023. IEX is not proposing to amend the other conditions of the temporary relief in Supplementary Material .15 of IEX Rule 5.110. The current conditions of Supplementary Material .15 of IEX Rule 5.110 for Members that elect to conduct remote inspections would remain unchanged: such firms must still amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also allow IEX to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on Members’ overall supervisory systems in the evolving workplace.

IEX continues to believe this temporary remote inspection option is a reasonable alternative to provide to Members to fulfill their IEX Rule 5.110 obligations during the ongoing pandemic, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Members should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the

¹² See Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001) and Securities Exchange Act Release No. 96241 (November 4, 2022) 87 FR 67969 (November 10, 2022) (SR-FINRA-2022-030).

circumstances. For example, Members with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules.

IEX has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so IEX can implement the proposed rule change immediately.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹³ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange's rule proposal is intended to harmonize IEX's supervision rules, specifically with respect to the requirements for inspections of Members' branch offices and other locations, with those of FINRA, on which they are based.

Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. The proposed rule change would also avoid a potential lapse in the temporary relief

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

while challenges from COVID-19 persist, provide firms regulatory continuity in meeting their inspection obligations during the remaining Commission review period of the Pilot Proposal, and allow firms time to adapt to the pilot program, if approved, and prepare for conducting on-site inspections, as applicable.

In recognition of the impact of COVID-19 on performing on-site inspections, the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely for calendar year 2023 inspections (or until the effective date of the FINRA pilot program). This proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, IEX believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with IEX. The proposed rule change will also provide for consistent application of the Exchange's supervision rules with those of FINRA, on

which they are based. Consequently, the Exchange does not believe that the proposed change implicates competition at all.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)¹⁵ of the Act and Rule 19b-4(f)(6)¹⁶ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay to permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing.

IEX has indicated that extending the relief provided in SR-IEX-2022-12 would provide assurances to its member firms that they can plan their 2023 inspection program and conduct remote inspections for any inspections to be conducted through the earlier of the effective date of the FINRA Pilot Program, if approved, or December 31, 2023. Importantly, extending the relief immediately upon filing and without a 30-day operative delay would allow IEX's member firms to continue performing their supervisory obligations, while addressing the ongoing impacts of the COVID-19 pandemic. Moreover, like SR-IEX-2022-12, the proposed extension would provide only temporary relief during the period in which IEX's member firms' operations remain impacted by COVID-19. Thus, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2022-14 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2022-14. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

²¹ 15 U.S.C. 78s(b)(2)(B).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at IEX's principal office and on its Internet website at www.iextrading.com. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2022-14 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).